

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIYANO MACHINERY USA,,)	
INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
-vs-)	NO. 08 C 526
)	
MIYANOHITEC MACHINERY,)	
INC., THOMAS ("TOM") MIYANO)	
a/k/a TOSHIHARU MIYANO and)	
STEVEN MIYANO, a/k/a)	
SHIGEMORI MIYANO,)	
)	
Defendant.)	

DEPOSITION OF GEORGE H. KOBAYASHI

JULY 17, 2008 - 9:32 A.M.

The Deposition of GEORGE H. KOBAYASHI,
taken pursuant to the Rules of Civil Procedure
for the United States District Courts pertaining
to the taking of depositions, taken before Jerry
Satterlee, a Certified Shorthand Reporter within
and for the State of Illinois, at 77 West
Washington Street, Suite 900, Chicago, Illinois.

1 PRESENT:

2 COOK, ALEX, MC FARRON,
3 MANZO, CUMMINGS & MEHLER, LTD.,
4 (200 W. Adams St., Suite 2850,
5 Chicago, IL 60606 - 312.236.8500
6 Lalex@cookalex.com), by:

7 MR. LOUIS J. ALEX,

8 -and-

9 MASUDA, FUNAI, EIFERT & MITCHELL, LTD.,
10 (203 N. LaSalle Street, Suite 2500,
11 Chicago, IL 60601-1262 - 312.245.7500
12 Skatz@masudafunai.com), by:

13 MR. STEVEN KATZ,

14 On behalf of the Plaintiff;

15
16 DOWELL BAKER,
17 (229 Randolph Street,
18 Oak Park, IL 60302 708.660.1413
19 Gabaker@dowellbaker.com), by:

20 MR. GEOFFREY A. BAKER,

21 -and-

1 PRESENT: (CONT'D)

2
3 FRANCISSEN PATENT LAW, P.C.,
4 (The Monadnock Building, 53 W. Jackson
5 Boulevard, Suite 1320, Chicago, IL
6 60604 312.294.9980 -
7 Vern@francisssenpatentlaw.com), by:
8 MR. VERNON W. FRANCISSEN,
9

10 -and-
11

12 ROBERT M. KARTON, LTD.,
13 (77 W. Washington Street, Suite 900,
14 Chicago, IL 60602 - 312.214.0900
15 Robert@karton.us), by:
16 MR. ROBERT M. KARTON,
17

18 On behalf of the Defendants.
19
20
21
22
23
24

1 A. I am sorry. Can you define what you
2 mean by the information they were giving to me?

3 Q. Considering first use anywhere and
4 first use in commerce.

5 MR. KATZ: Objection asked and answered.
6 BY MR. KARTON:

7 Q. You can answer it anyway.

8 A. I challenged the client as to the
9 date of first use in U.S. commerce and anywhere
10 else in the world and the client provided me the
11 date as set forth in the trademark application.

12 Q. And the question is did you do any
13 other independent investigation to confirm that
14 information that you got?

15 A. Sitting here today, I do not recall.

16 Q. Do you have any idea what they based
17 their statement on?

18 A. It is impossible for me to assume
19 what they based their information on.

20 Q. Did they tell you what they based
21 their statements on?

22 A. I don't recall at this time.

23 Q. Do you have any recollection that they
24 shared any support information with you at that

1 time other than the bald statement that first use
2 anywhere, first use in commerce was January 9,
3 1975?

4 A. I don't recall.

5 (The document was thereupon marked
6 for identification as Exhibit No.
7 111, as of 7/17/08.)

8 BY MR. KARTON:

9 Q. I show you an application which I have
10 marked as Exhibit 111 and ask you if you recognize
11 that application?

12 A. Can you hold for one moment so I can
13 review it?

14 Q. Sure.

15 (PAUSE.)

16 BY MR. KARTON:

17 Q. Can you tell me what Exhibit 111 is?

18 A. Yes.

19 Q. Would you please?

20 A. Exhibit 111 appears to be the
21 trademark application for the triangle winged M
22 mark for services that was submitted to the
23 United States Patent and Trademark Office.

24 Q. When was this submitted?

1 Q. Is there anybody else at MMU that you
2 can recall gave you any information at all
3 concerning first use anywhere or first use in
4 commerce of this service mark that you were
5 applying to register?

6 A. Sitting here today, I do not recall.

7 Q. Do you recall having any documentary
8 evidence at all of any kind that would support
9 that first use date?

10 A. I don't have an independent
11 recollection of that.

12 Q. On the fourth page of the set that I
13 gave you, there is a kind of a grainy picture.

14 MR. KATZ: Bob, just for your reference,
15 the fourth page that you have given me has no
16 picture on it. It is almost blank:

17 MR. KARTON: Does the next page have
18 anything on it?

19 MR. KATZ: It does. Mine has a fifth page.

20 MR. KARTON: It probably grabbed an extra
21 page.

22 Do you also have a blank page?

23 THE WITNESS: I have a blank page four.

24 MR. KARTON: That is probably an extra page

1 Q. Mr. Kobayashi, what do you base your
2 conclusion that it is just a minor font variation?

3 A. I am sorry. Could you clarify the
4 question?

5 Q. Yeah. You said you considered the
6 difference to be a minor font variation?

7 A. I can visibly see that there is a
8 minor font variation.

9 Q. On what do you base your conclusion
10 that it is a font variation as opposed to a design
11 variation?

12 A. That is my -- that was my legal
13 conclusion at the time.

14 Q. That was your what?

15 A. That was my -- that was my opinion at
16 the time.

17 Q. That was your legal conclusion at the
18 time, is that what you said?

19 A. Yes.

20 Q. Did you at the time that you made that
21 conclusion, did you inquire whether or not there
22 was any kind of a factual basis for a
23 determination that it was a minor font variation?

24 A. I don't recall.

1 had a triangle and a winged M and the word Miyano
2 in it, is that correct?

3 A. Yes.

4 Q. Was the word Miyano the block M Miyano
5 or the stylized Miyano?

6 A. I consider them the same. I remember
7 seeing three elements -- the triangle with the
8 winged M mark in the apex and the word Miyano
9 underneath it.

10 Q. You have no recollection of whether it
11 was block or script, is that correct?

12 A. Yes.

13 MR. FRANCISSEN: Do you want to take five
14 minutes?

15 THE WITNESS: If you guys don't mind.

16 (A RECESS WAS HAD.)

17 (The document was thereupon marked
18 for identification as Exhibit No.
19 112, as of 7/17/08.)

20 BY MR. KARTON:

21 Q. Mr. Kobayashi, I am showing you an
22 exhibit marked Exhibit 112. I ask you if you can
23 identify that?

24 A. Can I just have a moment to take a